

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
DAVE CRAWFORD, ED FRUHLING, and )  
CHARLES NELSON, d.b.a. C.F.N. )  
PROPERTIES, )

Appellants, )

v. )

PUGET SOUND AIR POLLUTION )  
CONTROL AGENCY, )

Respondent. )

PCHB No. 1043

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

THIS MATTER, the appeal of three civil penalties totaling \$750.00 for outdoor burning which allegedly violated Section 8.05 or Section 8.06 of respondent's Regulation I having come on regularly for formal hearing on the 15th day of November, 1976 in Seattle, Washington, and appellants Dave Crawford, Ed Fruhling and Charles Nelson being represented by Dave Crawford, a partner in C.F.N. Properties, and respondent Puget Sound Air Pollution Control Agency appearing through its attorney, Keith D. McGoffin with William A. Harrison, hearing

1 examiner presiding, and the Board having considered the exhibits,  
2 records and files herein and having reviewed the proposed Findings of  
3 Fact, Conclusions of Law and Order of the presiding officer mailed to  
4 the parties, and more than twenty days having elapsed from said service;  
5 and

6 The Board having received no exceptions to said proposed Findings  
7 of Fact, Conclusions of Law and Order and the Board being fully advised  
8 in the premises; now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed  
10 Findings of Fact, Conclusions of Law and Order dated the 16th day of  
11 December, 1976, and incorporated by reference herein and attached  
12 hereto as Exhibit A, is adopted and hereby entered as the Board's  
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 1<sup>st</sup> day of February, 1977.

15 POLLUTION CONTROL HEARINGS BOARD

16 Art Brown

17 ART BROWN, Chairman

18 W. A. Gissberg

19 W. A. GISSBERG, Member

20 Chris Smith

21 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW AND ORDER

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AND ORDER

This matter is the appeal of three civil penalties totaling \$750.00 for outdoor burning which allegedly violated Section 8.05 or Section 8.06 of respondent's Regulation I. Hearing was held before the Pollution Control Hearings Board, William A. Harrison, Hearing Examiner, presiding alone at Seattle, Washington on November 15, 1976.

The appellants were represented by Dave Crawford, a partner in C.F.N. Properties. The respondent was represented by and through its attorney, Keith D. McGoffin. Reporting services were provided by Eugene E. Barker,

EXHIBIT A

1 Olympia court reporter.

2 Witnesses were sworn and testified. Exhibits were admitted. In  
3 the interest of a more orderly presentation, separate Findings of Fact  
4 and Conclusions of Law are presented for the events of April 29, 1976  
5 which allegedly violate Section 8.05, and the events of May 22 and 23,  
6 1976, which allegedly violate Section 8.06 of respondent's Regulation I.

7 APRIL 29, 1976

8 FINDINGS OF FACT

9 1. Respondent, pursuant to RCW 43.21B.260, has filed with this Board  
10 a certified copy of its Regulation I containing respondent's regulations  
11 and amendments thereto. Official notice thereof is hereby taken.

12 2. The Board has jurisdiction over the persons and subject matter  
13 of this appeal.

14 3. C.F.N. Properties, a partnership, owned the land in question  
15 at all times relevant to this appeal. The partners in C.F.N. Properties  
16 are Dave Crawford, Ed Fruhling, and Charles Nelson. The property,  
17 located in Seattle, which is the subject of this appeal was being held  
18 for the development of multiple family rental dwellings.

19 4. Previously, on October 11, 1975, Charles Nelson, a partner in  
20 C.F.N. Properties, received a copy of PSAPCA outdoor fire regulations  
21 (R-3). This he received because C.F.N. Properties was believed  
22 responsible for another fire which had spurred a citizen complaint to  
23 PSAPCA.

24 5. On April 29, 1976 at approximately 2:30 p.m. a ten foot square  
25 fire emitting heavy smoke was observed upon the appellants' property.  
26 The fire was observed by Mr. Colton, a citizen, who resided across the

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 street one block away from the fire. Mr. Colton witnessed a black pickup  
2 truck with a wooden canopy at the scene of the fire. Such a truck is  
3 owned by John Crawford, brother of appellant Dave Crawford. Mr. Colton  
4 later described the fire to his wife who is employed as a radio  
5 telephone operator with PSAPCA. Mrs. Colton related the incident to  
6 Mr. Eng, a PSAPCA inspector, who then visited the site on the following  
7 day, April 30, 1976, and saw the remains of the fire described by  
8 Mr. Colton.

9 6. C.F.N. Properties neither applied for nor obtained a PSAPCA  
10 permit for the outdoor burning just described.

11 7. A Notice of Violation was duly issued by PSAPCA on May 24, 1976  
12 and a Notice and Order of Civil Penalty in the amount of \$250.00 was  
13 issued on June 16, 1976.

14 8. Any Conclusion of Law hereinafter recited which should be  
15 deemed a Finding of Fact is hereby adopted as such.

16 From these Findings the Pollution Control Hearings Board comes to  
17 these

18 CONCLUSIONS OF LAW

19 1. Section 8.04(b) of respondent's Regulation I states that  
20 "It shall be prima facie evidence that the person who owns or controls  
21 property on which an outdoor fire occurs has caused or allowed said  
22 outdoor fire." In this matter, C.F.N. Properties owned and controlled  
23 the property upon which the outdoor fire occurred and has failed to rebut  
24 the regulatory presumption that said fire was caused by them.

25 2. Section 8.05 of respondent's Regulation I provides that any  
26 outdoor fire is unlawful unless prior written approval has been issued

27 FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 by PSAPCA. There are two exceptions, however. One is burning for the  
2 purpose of land clearing and the other is residential burning. The  
3 appellants have urged that their fire fits within one or the other  
4 of these exceptions. It does not.

5 Land clearing fires are addressed at Section 8.06 of respondent's  
6 Regulation I. Land clearing fires are prohibited within urbanized areas  
7 as defined by the U. S. Bureau of the Census, unless PSAPCA "verifies"  
8 that the population is below a density of 2,500 persons per square mile.  
9 The site in question is within an urbanized area (R-4) and PSAPCA  
10 verification was neither sought nor obtained by the appellants. The fire  
11 cannot therefore be characterized as a lawful land clearing fire.

12 Residential fires are addressed at Section 8.09 of respondent's  
13 Regulation I. It is apparent at first glance that the fire in question  
14 was not in conformity to the Section 8.09 requirement that it be  
15 "conducted only by the resident of a single family dwelling." The  
16 Clean Air Act, at RCW 70.94.770, states that such outdoor burning by  
17 the resident of a single family dwelling must be "in the course of  
18 maintaining or improving the grounds of such residence." Appellants  
19 therefore failed to establish that their fire was "residential" because  
20 their fire was burned to clear a vacant building site in contrast with  
21 burning to maintain the grounds of an existing (single family) dwelling.

22 3. The appellants violated Section 8.05 of respondent's Regulation  
23 I in that they caused or allowed an outdoor fire without the prior  
24 written approval of PSAPCA, as required. This violation occurred after  
25 PSAPCA outdoor fire regulations were specifically brought to the  
26 attention of the appellants.

27 FINDINGS OF FACT,  
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1 4. Any Finding of Fact which should be deemed a Conclusion of Law  
2 is hereby adopted as such.

3 ORDER

4 The violation and \$250.00 civil penalty imposed by Notice and Order  
5 of Civil Penalty No. 2852 here appealed from, are each hereby affirmed.

6 MAY 22, 23, 1976

7 FINDINGS OF FACT

8 1. Respondent, pursuant to RCW 43.21B.260, has filed with this  
9 Board a certified copy of its Regulation I containing respondent's  
10 regulations and amendments thereto. Official notice thereof is hereby  
11 taken.

12 2. The Board has jurisdiction over the persons and subject matter  
13 of this appeal.

14 3. C.F.N. Properties, a partnership, owned the land in question at  
15 all times relevant to this appeal. The partners in C.F.N. Properties are  
16 Dave Crawford, Ed Fruhling, and Charles Nelson. During the time relevant  
17 to this appeal the land, located in Seattle, was held for development of  
18 multiple family rental dwellings.

19 4. On May 21, 1976, appellant Dave Crawford appeared in person at  
20 the Shoreline Fire Department (King County Fire Protection District #4)  
21 and sought a permit to conduct outdoor burning. The Fire Department  
22 issued a written Fire Department permit (R-5). This permit was rubber  
23 stamped with the legend "Approval to burn subject to PSAPCA regulations--  
24 A. R. Dammkoehler, Control Officer." The Fire Department further advised  
25 Mr. Crawford to telephone PSAPCA. After accepting the Fire Department  
26 permit, Mr. Crawford telephoned the PSAPCA offices on Harrison Street in

27 FINDINGS OF FACT,  
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1 Seattle and asked for permission to burn natural vegetation cleared from  
2 the site owned by C.F.N. Properties. A PSAPCA agent replied that the  
3 population density at the site was probably too great to permit a land  
4 clearing fire and that the kind of fire described by Mr. Crawford was  
5 probably not residential burning. Mr. Crawford then denounced  
6 "bureaucracy" and announced his intention to conduct outdoor burning  
7 anyway, citing his possession of a Fire Department permit.

8 5. On May 22, 1976, an outdoor fire was ignited on land belonging  
9 to the appellants by John Crawford, an employee of appellants and the  
10 brother of appellant Dave Crawford. Said fire was 8 to 10 feet in  
11 diameter and 5 feet tall consisting of stumps, wood, and other natural  
12 vegetation cleared from the land surrounding the fire.

13 6. At approximately 6:00 p.m. on May 22, 1976, Battalion Chief  
14 Baker of the Shoreline Fire Department discovered that a permit had been  
15 issued to appellant for outdoor burning that probably would not conform  
16 with PSAPCA regulations. He personally visited the fire site and  
17 physically repossessed the Fire Department permit from appellants'  
18 employee, John Crawford. Since Chief Baker believed that the fire was  
19 still lawful under Fire Department regulations, he did not demand that  
20 the fire be extinguished and it continued to burn.

21 7. Shortly after 6:00 p.m. on May 22, 1976 the fire was witnessed  
22 by Mr. and Mrs. Colton, citizens who reside one block from the fire.  
23 Mrs. Colton is employed as a radio telephone operator for PSAPCA.

24 8. In the afternoon of the following day, May 23, 1976, flame and  
25 smoke were again observed by Mr. and Mrs. Colton at the same site.

26 9. On May 24, 1976, a Monday, Mrs. Colton related the events of  
27 the previous two days to PSAPCA inspector Eng who visited the site on



1 May 24, and observed the remains of the outdoor fire.

2 10. On May 28, 1976, separate notices of violation were issued for  
3 the outdoor fires which occurred on May 22 and 23 of 1976. On June 16,  
4 1976 separate Notices and Orders of Civil Penalty were issued  
5 assessing civil penalties of \$250.00 for each day's outdoor burning, the  
6 total being \$500.00.

7 11. Any Conclusion of Law hereinafter recited which should be  
8 deemed a Finding of Fact is hereby adopted as such.

9 From these Findings the Pollution Control Hearings Board comes to  
10 these

11 CONCLUSIONS OF LAW

12 1. The appellants caused the outdoor fires of May 22 and 23, 1976.

13 2. Said fires violated Section 8.06 of respondent's Regulation I  
14 in that they were for land clearing purposes within an urbanized area  
15 as defined by the United States Bureau of the Census although PSAPCA had  
16 not verified that the average population density was 2,500 persons per  
17 square mile or less.

18 3. Appellants failed to establish that their fires were "residential"  
19 within the meaning of Section 8.09 of respondent's Regulation I. This is  
20 so because their fires were burned to clear a vacant building site in  
21 contrast with burning to maintain the grounds of an existing (single  
22 family) dwelling.

23 4. In this case the appellants were not misled about the  
24 necessity of obtaining PSAPCA permission before starting an outdoor fire.  
25 The permit issued by the Shoreline Fire Department contained language  
6 making that permit subject to PSAPCA regulations. A PSAPCA official

27 FINDINGS OF FACT,  
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1 told appellant Dave Crawford, on the day before the fires, that PSAPCA  
2 permission must be sought, and that the air pollution regulations of  
3 PSAPCA probably prohibited the fires which appellants contemplated.  
4 Nevertheless, the appellants, a business organization, repudiated PSAPCA  
5 authority and proceeded to burn large outdoor fires at their own risk.  
6 That is, and should be, costly.

7 5. Any Finding of Fact which should be deemed a Conclusion of  
8 Law is hereby adopted as such.

9 ORDER

10 The violations and civil penalties, totaling \$500.00, imposed by  
11 Notice and Order of Civil Penalty Nos. 2853 and 2854 are each hereby  
12 affirmed.

13 DATED this 16<sup>TH</sup> day of December, 1976.

14 POLLUTION CONTROL HEARINGS BOARD

15 William A. Harrison

16 WILLIAM A. HARRISON  
17 Hearing Examiner

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FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER